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In the

Supreme Court of the United States

October Term, 1961

No. 32

CHARLES CLARENCE HAMILTON,

Petitioner,

versus

STATE OF ALABAMA

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF AND ARGUMENT OF RESPONDENT

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I
OPINIONS BELOW

The opinion of the Supreme Court of Alabama denying petitioner's petition for leave to file an application for writ of error coram nobis in the trial court is reported at 271 Ala. 88, 122 So. 2d 602, and is printed in R. pp. 27-35. An earlier opinion of the same court affirming petitioner's judgment of conviction is reported at 270 Ala. 184, 116 So. 2d 906 (See also Appendix A of petitioner's brief, pp. 1a - 10a), and this Court's denial of certiorari is reported at 363 U. S. 852.

II
JURISDICTION

Pursuant to Title 28, United States Code, Section 1257, petitioner was granted a writ of certiorari by this Court on

January 9, 1961 to review the judgment of the Supreme Court of Alabama, rendered on August 15, 1960, denying his petition for leave to file an application for writ of error coram nobis in the Circuit Court of Jefferson County, Alabama (See "Opinions Below," supra). *Hamilton v. Alabama*, ...U. S. ....., 81 S. Ct. 388.

III
QUESTIONS PRESENTED

1. Whether there is a violation of due process of law or an impingement of fundamental rights by the Alabama Supreme Court's denial of a petition for leave to file an application for writ of error coram nobis in the trial court when the petition alleges that the petitioner pleaded not guilty to a capital crime while not represented by counsel at his arraignment on March 1, 1957, but it makes no showing or effort to show that petitioner was prejudiced or disadvantaged in any way by such absence of counsel at arraignment, when the record shows that competent counsel, who was appointed to represent petitioner on March 4, 1957, stated that he would not have entered any different plea than the one of not guilty which had been entered by petitioner on March 1, 1957, and when the record shows that said counsel actively represented petitioner at his trial on April 23, 1957.

2. Whether, under the total facts of the case and the allegations and evidence presented by him to the Supreme Court of Alabama in his petition for leave to file an application for writ of error coram nobis, this petitioner has established the existence of such prejudice or disadvantage by reason of his having been unassisted by counsel at arraignment when he interposed a plea of not guilty to an indictment charging him with a capital crime as to warrant this Court's finding that an ingredient of fundamental unfairness actively

operated in the process that resulted in his conviction and death sentence and that, as a consequence, he was denied due process of law.

IV

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

Code of Alabama 1940: Title 14, Section 85

Title 15, Section 318

Title 15, Section 423

Constitution of the United States: Fourteenth Amendment

United States Code: Title 28, Section 1257

V

STATEMENT

The pertinent facts of this case are set out in detail in the opinions of the Supreme Court of Alabama cited in "Opinions Below," supra, but, briefly, they are as follows:

The offense of which petitioner stands convicted occurred on October 12 or 13, 1956 (R. p. 1; Appendix A, petitioner's brief, p. 2a); on November 9, 1956 the grand jury of Jefferson County, Alabama, returned a one-count indictment charging petitioner with the offense of burglary of an inhabited dwelling in the nighttime with intent to steal (R. pp. 1, 28); on January 4, 1957, while represented by competent (R. p. 35) court-appointed counsel, Honorable Clell I. Mayfield, petitioner was arraigned on that indictment and pleaded not guilty (R. pp. 1, 4, 13); on February 12, 1957, a second indictment, consisting of two counts, was returned against petitioner, the first count charging burglary of an inhabited

dwelling in the nighttime with intent to steal, and the second count charging burglary of an inhabited dwelling in the nighttime with intent to ravish. (R. pp. 2,28).

Both the first and second indictments arose out of the same transaction (R. p. 28), and Mr. Mayfield, who considered himself as representing petitioner for the second case and was aware of the fact that a second arraignment would be had on a day certain (R. pp. 13, 14, 28), did not attend the second arraignment because he was of the opinion that it was a mere formality and that his presence would not be necessary since a plea of not guilty would again be entered (R. p. 13); on March 1, 1957, while unattended by any counsel, petitioner was arraigned upon the second indictment and pleaded not guilty (R. pp. 2, 4, 28); on March 4, 1957, in order that he might receive his fee for the second case, Mr. Mayfield was again appointed to represent petitioner (R. pp. 4, 15); on April 23, 1957, while actively represented by Mr. Mayfield (See record filed with the petition for writ of certiorari, No. 1026 Misc., October Term, 1959), petitioner was tried by a jury, was found guilty of the second count of the second indictment, and was sentenced to suffer death (See record filed with the petition for writ of certiorari, No. 1026 Misc., October Term, 1959); on April 24, 1957 the first indictment was nolle prossed (R. pp. 1, 4); under the automatic appeal statute the judgment was reviewed and affirmed by the Supreme Court of Alabama, and certiorari was denied by this Court (See "Opinions Below," supra).

Subsequently, petitioner filed in the Supreme Court of Alabama a petition for leave to file an application for writ of error coram nobis in the Circuit Court of Jefferson County, Alabama, alleging, *inter alia*, that he was without counsel on March 1, 1957 when he was arraigned and pleaded not guilty, but said petition contained no showing or effort to show that he was prejudiced or disadvantaged in any way by the absence of counsel when he was arrainged and entered his plea

of not guilty (R. pp. 13, 35); the petition for writ of error coram nobis was denied by the Supreme Court of Alabama and, upon timely petition therefor, this Court granted a writ of certiorari to review the state court's judgment (See "Opinions Below," supra).

VI
SUMMARY OF ARGUMENT

To warrant a state court's issuance of the extraordinary writ of error coram nobis, based on an indigent accused's allegation that he pleaded not guilty to a capital charge while not represented by counsel at his arraignment, the petition must make a showing of or, at least, proffer evidence that petitioner, who shortly after arraignment and during his subsequent trial was assisted by competent counsel, suffered substantial prejudice or disadvantage as a result of the absence of counsel when he entered his plea.

The total record in this case clearly demonstrates that petitioner was not so "taken advantage of" as to violate due process of law.

VII
ARGUMENT

1.

The Supreme Court of Alabama has stated, in effect, that in petitioner's case there was a violation of Code of Alabama 1940, Title 15, Section 318 (R. p. 29; petitioner's brief p. 3), providing that the trial court must appoint counsel to represent an indigent person who is charged with a capital crime. Had petitioner, on the appeal from the judgment of his conviction, been able to attack successfully the trial court's judgment entry which, as was subsequently developed by competent evidence, incorrectly stated that he was represented by counsel at the time of his arraignment on March

1, 1957, conceivably his case might have been reversed and remanded; however, by the method employed, he was unable to do this under Alabama law. *Hamilton v. State*, 270 Ala. 184, 116 So. 2d 906, certiorari denied 363 U. S. 852; Appendix A, petitioner's brief, pp. 4a - 6a.

Therefore, said violation of state law should not be considered in this proceeding because the jurisdiction of a federal court is limited to the determination of questions relating to the denial of rights under the federal constitution and does not extend to the adjudication of nonfederal questions of state law. *State v. Sullivan*, 10 Cir. 1955, 227 F. 2d 511, certiorari denied Braasch v. State of Utah, 350 U. S. 973. This Court is not concerned with any contravention of a state's statutes or constitution. *Powell v. Alabama*, 287 U. S. 45; *Williams v. Kaiser*, 323 U. S. 471; *Madden v. Kentucky*, 309 U. S. 83. A decision of a state court resting on grounds of state procedure, which does not offend some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental, does not present a federal question. *Speiser v. Randall*, 357 U. S. 513; *Avery v. Alabama*, 308 U. S. 444; *Brown v. Mississippi*, 297 U. S. 278; *Miller v. Texas*, 153 U. S. 535; *Frank v. Mangum*, 237 U. S. 309; *Crooker v. California*, 357 U. S. 433, 440.

Having been unsuccessful in his appeal, petitioner sought relief by applying for a writ of error coram nobis which, under Alabama law, is available to a person who claims that his conviction and sentence is due to failure to observe that fundamental fairness essential to every concept of justice, even after the judgment has been affirmed by the Supreme Court of Alabama.

However, an application for a writ of error coram nobis should make an adequate showing of the substantiality of the petitioner's claim to the satisfaction of the state appellate court. A mere naked allegation that a constitutional right

has been invaded will not suffice. The application should make a full disclosure of the specific facts relied upon, and not merely conclusions as to the nature and effect of such facts. The proof must enable the court to ascertain whether under settled principles pertaining to such writ the facts alleged would afford at least prima facie just ground for the issuance of the writ. State appellate courts are authorized to exercise their discretion in matters of this character and should look into the reasonableness of the allegations of the petition and to the existence of the probability of the truth thereof. *Johnson v. Williams*, 244 Ala. 391, 13 So. 2d 683; *Ex Parte Seals*, 271 Ala. 622, 126 So. 2d 474.

This, then, brings into focus the question of whether the Supreme Court of Alabama erred in denying petitioner's coram nobis petition which, in pertinent part, alleged that counsel was not appointed to represent him until three days after he, without benefit of counsel at his arraignment, had pleaded not guilty to a capital crime, but which contained no allegation and was not supported by any evidence that he was prejudiced or disadvantaged in any way by such absence of counsel at his arraignment (R. pp. 1-7).

The state court grounded its denial of this petition on the fact that there was no fundamental unfairness which would violate due process of law inasmuch as the petition contained no allegation or attempt to show that petitioner was prejudiced or disadvantaged in any way by the absence of counsel when petitioner interposed his plea of not guilty.

Such reasoning by the Supreme Court of Alabama finds support in the decisions of several federal courts dealing with capital as well as non-capital cases. In *Betts v. Brady*, 316 U. S. 455, a non-capital case, this Court indicated that only if the defendant has been disadvantaged under the facts shown to the court, denial of counsel is a denial of due

process. In *Canizio v. New York*, 327 U. S. 82, it was held that the constitutional right of an accused in a state court to the assistance of counsel will not be deemed to have been infringed, so as to require the setting aside of his conviction of robbery in the first degree, unarmed, upon his plea of guilty, where, although he was without counsel when arraigned and when he pleaded guilty, was unfamiliar with his legal rights, and may not have been informed by the court of his right to counsel, it appears that in long hearings during the day of sentence, he was actively represented by counsel, who could have moved to withdraw the plea of guilty, but apparently thought that it would be to his client's best interests not to do so.

Almost invariably it is held that absence of counsel at arraignment does not constitute a violation of due process where the accused enters a plea of not guilty. *Council v. Clemmer*, C.A.D.C. 1949, 177 F. 2d 22; *De Maurez v. Swope*, 9 Cir. 1939, 104 F. 2d 758. This is particularly true where, shortly after the unaided accused enters a plea of not guilty, counsel is furnished for the preparation for his trial and for his trial itself. *United States v. Stevenson*, D.C.D.C. 1959, 170 F. supp. 315; *State v. Sullivan*, 10 Cir. 1955, 227 F. 2d 511, certiorari denied Braasch v. State of Utah, 350 U. S. 973. It is noteworthy that *State v. Sullivan*, supra, involved a capital crime in a state court.

2.

The ultimate test is "fundamental unfairness" (*Crooker v. California*, 357 U. S. 433), and each case must stand on its own particular facts in a determination as to whether or not lack of representation by counsel constitutes a denial of due process. *Uveges v. Pennsylvania*, 335 U. S. 437; *Gibbs v. Burke*, 337 U. S. 773. This court has stated that the test of disadvantage is ignorance, illiteracy, feeble-mindedness, or

other like inadequacy of the defendant which makes him incapable of conducting his own defense in that particular stage of the proceeding. *Powell v. Alabama*, 287 U. S. 45. The defendant's lack of familiarity with his legal rights has been added. *Canizio v. New York*, 327 U. S. 45. Later, the test was expanded to include mental illness and incapability of questioning witnesses where highly complex legal issues are involved. *McNeal v. Culver*, 365 U. S. ____, 81 S. Ct. 413, 5 L.Ed. 2d 445.

In *Jones v. Cochran*, 125 So. 2d 99, the Supreme Court of Florida aptly stated:

> "The necessity for the appointment of counsel in order to meet Fourteenth Amendment requirements is influenced largely by the following factors: (1) the gravity of the offense, (2) the nature and complexity of the issue, (3) the age of the defendant, (4) his mental capacity, (5) background, including education and experience, (6) knowledge of law and procedure and, (7) the degree of protection given during the trial as appears from the conduct of the Court or prosecuting officials. 93 L.Ed. 149. No one of these factors alone is decisive. As pointed out in Betts v. Brady, supra (316 U. S. 455), it is necessary to appraise the totality of the facts and decide whether the need for counsel is so great that the deprivation of such assistance produces a fundamental unfairness."

Applying these tests to the case at bar, it seems clear that the Supreme Court of Alabama correctly denied petitioner's coram nobis petition.

Admittedly, the offense was of the utmost gravity, but the issues involved were not complex. The record does not reflect petitioner's age, but there is no claim made that he

was unusually young. Investigation by the State Board of Pardons and Paroles reveals that he was not ignorant, illiterate, or feeble-minded, having reached the eleventh grade in school, and that two years thereafter he enlisted in the United States Army in which he served from 1950 until January 1956 (See record filed with the petition for writ of certiorari, No. 1026 Misc., October Term, 1959, p. 8). This last mentioned record, pages 9 to 11, coupled with his long military service, dispels petitioner's intimation that he was insane or mentally ill. Pages 55 to 79 of the same record also reflect petitioner's non-professional ability to testify in his own behalf and to question witnesses.

Respondent has no knowledge of petitioner's familiarity with his legal rights, but he was present at his first arraignment on January 4, 1957 when court-appointed counsel pleaded him not guilty to an indictment (R. pp. 1, 4, 13) which, in part, was identical with the second indictment to which petitioner, unaided by counsel, pleaded not guilty when arraigned on March 1, 1957 (R. pp. 2, 4, 28). The second indictment, as well as the first indictment, arose out of the same transaction (R. p. 28). Petitioner received no ill treatment at the hands of the trial judge or the prosecuting attorney. Furthermore, it is reasonable to suppose that prior to receiving his dishonorable discharge from the Army in January, 1956, petitioner was tried by a General Court-Martial at which he was present and where he observed the legal proceedings (See record filed with the petition for writ of certiorari, No. 1026 Misc., October Term, 1959, p. 8).

Counsel was reappointed to represent petitioner on March 4, 1957, three days after the second arraignment (R. pp. 4, 15). Counsel, whose competence is not questioned (R. p. 35), explained why he considered it unnecessary for him to be present at the second arraignment, and stated that had he been present he, too, would have entered a plea of not guilty

(R. p. 13). Counsel actively represented petitioner at the trial on April 23, 1957, which was approximately fifty days after the second arraignment.

It might be argued that had petitioner been represented by counsel at the second arraignment, a motion for a change of venue might have been filed. To this, respondent wishes to point out that there was no claim made that the climate of opinion in Jefferson County was such that petitioner could not get a fair and impartial jury trial. There is no claim made that discrimination was practiced in the selection of the grand or petit juries. There is no claim made that a continuance would have benefited petitioner.

It might be argued that had counsel been present, he would have entered a plea of not guilty by reason of insanity. True, Code of Alabama 1940, Title 15, Section 423 (See Appendix A), provides that such a plea must be interposed at the time of arraignment, but the Alabama courts have held that such a special plea, with the trial court's permission, may be filed after arraignment. *Baker v. State*, 209 Ala. 142, 95 So. 467; *Sheppard v. State*, 257 Ala. 626, 60 So. 2d 329. Counsel, who was appointed only three days after petitioner's arraignment, considered him sane prior to and at the time of trial; only the affidavit of petitioner's first cousin, once removed, dated May 23, 1957 and introduced in support of a motion for new trial, intimates that counsel, after observing petitioner's erratic behavior at the trial, questioned his sanity. There is no evidence that counsel considered petitioner insane prior to the time of trial.

Finally, the petition for leave to file an application for writ of error coram nobis contained no allegation and offered no evidence that petitioner had been prejudiced or disadvantaged in any way by the absence of counsel at his arraignment.

VIII

CONCLUSION

For the foregoing reasons, respondent contends that the judgment of the Supreme Court of Alabama should be affirmed.

Respectfully submitted,

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Attorney General
State of Alabama

George D. Mentz
Assistant Attorney General
State of Alabama

Counsel for Respondent

CERTIFICATE

This is to certify that I, George D. Mentz, one of the attorneys for respondent and a member of the Bar of the Supreme Court of the United States, served two copies of the foregoing Brief and Argument of Respondent on Orzell Billingsley, Jr., 1630 Fourth Avenue, North, Birmingham, Alabama, one of the attorneys of record for petitioner, by mailing them in a properly addressed envelope, with first-class postage prepaid, in the United States mail, and I also served three copies of the foregoing Brief and Argument of Respondent on Thurgood Marshall, 10 Columbus Circle, Suite 1790, New York 19, New York, one of the attorneys of record for petitioner, by mailing them in a properly addressed envelope, with air mail postage prepaid in the United States mail on the _____ day of October, 1961.

George D. Mentz
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APPENDIX

Code of Alabama 1940, Title 15, Section 423, reads:

§ 423. (4573) (7176) (4939) INSANITY MUST BE SPECIALLY PLEADED AS A DEFENSE FOR CRIME.—When the defense of insanity is set up in any criminal prosecution it must be by special plea, interposed at the time of arraignment and entered of record upon the docket of the court, which in substance shall be, "not guilty by reason of insanity." Such plea shall not preclude the usual plea of the general issue, which shall not, however, put in issue the question of the irresponsibility of the accused by reason of this alleged insanity, this question being triable only under the special plea.